

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



0000105587

RECEIVED
Executive Director

2009 DEC -1 P 12:35

AZ CORP COMMISSION
DOCKET CONTROL

DATE: DECEMBER 1, 2009

DOCKET NOS.: W-20459A-08-0167 and W-20459A-08-0168

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

UTILITY SYSTEMS, LLC dba GARDNER WATER COMPANY and UTILITY SYSTEMS, LLC dba CHRISTOPHER CREEK HAVEN WATER COMPANY.
(RATES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 10, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

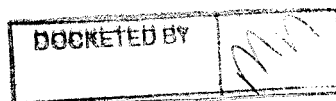
DECEMBER 15, 2009 and DECEMBER 16, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

DEC -1 2009



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

7 IN THE MATTER OF THE APPLICATION OF
8 UTILITY SYSTEMS, LLC, DBA GARDNER
9 WATER COMPANY FOR A PERMANENT RATE
10 INCREASE.

DOCKET NO. W-20459A-08-0167

10 IN THE MATTER OF THE APPLICATION OF
11 UTILITY SYSTEMS, LLC, DBA CHRISTOPHER
12 CREEK HAVEN WATER COMPANY FOR A
13 PERMANENT RATE INCREASE.

DOCKET NO. W-20459A-08-0168

DECISION NO. _____

ORDER

13 Open Meeting
14 December 15 and 16, 2009
15 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 * * * * *

19 **FINDINGS OF FACT**

20 **PROCEDURAL HISTORY**

21 **GARDNER WATER COMPANY**

22 1. On March 21, 2008, Utility Systems, LLC ("Utility Systems"), d/b/a Gardner Water
23 Company ("Gardner") filed with the Commission an application for an increase in its water rates
24 ("Gardner Application").¹

25 2. On April 17, 2008, the Commission's Utilities Division Staff ("Staff") filed an
26 Insufficiency Letter indicating Gardner's Application had not met the sufficiency requirements as

27 _____
28 ¹ Utility Systems owns another water company, Christopher Creek Haven Water Company. Utility Systems filed a rate application for Christopher Creek Haven Water Company simultaneously with the Gardner Application.

1 outlined in the Arizona Administrative Code ("A.A.C."), and provided Gardner with Staff's First Set
2 of Data Requests.

3 3. On May 19, 2008, Gardner filed its responses to Staff's Data Requests.

4 4. On June 19, 2008, Staff filed its Second Letter of Deficiency and Second Set of Data
5 Requests, and on July 9, 2008, Gardner responded.

6 5. On August 7, 2008, Staff filed its Third Letter of Deficiency and Third Set of Data
7 Requests, and on August 22, 2008, Gardner responded.

8 6. On September 22, 2008, Staff filed a Letter of Sufficiency in this matter, and indicated
9 that the Staff Report would be filed by November 21, 2008. Staff determined that Gardner is a Class
10 E utility and noted that, pursuant to A.R.S. § 40-250(A), the Commission may decide this case
11 without a hearing.

12 7. On November 21, 2008, Staff filed a Motion to Suspend Timeclock for 30 Days.
13 Gardner did not object to the request.

14 8. By Procedural Order dated December 3, 2008, Staff was granted until December 22,
15 2008, to file its Staff Report and the deadline in this matter was suspended.

16 9. On December 5, 2008, Gardner filed correspondence relating to the scope of work
17 performed by Utility Systems' owner, Jeffrey Daniels, on Gardner's behalf.

18 10. On December 22, 2008, Staff filed its Staff Report recommending approval of Staff's
19 proposed rates and charges.

20 11. On January 28, 2009, a Procedural Order was issued directing Gardner to file its
21 Response to the Staff Report by February 10, 2009, directing Staff to file its Reply to the Responses
22 by February 17, 2009, and setting a Procedural Conference for February 20, 2009.

23 12. On February 10, 2009, Gardner filed its Response to the Staff Report.

24 13. On February 18, 2009, Staff filed its Reply.

25 14. At the Procedural Conference held on February 20, 2009, both parties indicated that
26 they did not wish to have a hearing in this matter, each asserting that their respective positions had
27 been fully vetted in their filings.

28 15. On February 26, 2009, Gardner filed additional comments to Staff's Response.

1 16. Because of issues and concerns raised in Gardner's and Staff's respective filings, a
2 comprehensive review of past dockets involving Gardner was undertaken.

3 17. Based on this review, a Procedural Order was issued on July 2, 2009, requesting Staff
4 to file a Supplemental Staff Report addressing certain issues.² The Procedural Order noted that the
5 Staff assigned to the Gardner matter should confer with the Staff assigned to the Christopher Creek
6 Haven Water Company Application for consistency purposes.

7 18. On July 22, 2009, Staff filed a Request for Clarification and Motion to Consolidate.

8 19. On July 23, 2009, Staff filed a Supplement to Request for Clarification.

9 20. On July 28, 2009, a Procedural Order was filed clarifying certain directions in the July
10 2, 2009, Procedural Order and consolidating the Gardner and Christopher Creek Haven Water
11 Company matters.

12 21. On September 4, 2009, Staff filed its Supplemental Staff Report for the consolidated
13 matters.

14 22. On September 30, 2009, Utility Systems filed its Response to the Supplemental Staff
15 Report for the consolidated matters.

16 CHRISTOPHER CREEK HAVEN WATER COMPANY

17 23. On March 21, 2008, Utility Systems d/b/a Christopher Creek Haven Water Company
18 ("Christopher Creek"), filed with the Commission an application for an increase in its water rates
19 ("Christopher Creek Application").

20 24. On April 17, 2008, Staff filed an Insufficiency Letter indicating Christopher Creek's
21 Application had not met the sufficiency requirements as outlined in the A.A.C., and provided
22 Christopher Creek with Staff's First Set of Data Requests.

23 25. On May 19, 2008, Christopher Creek filed its responses to Staff's Data Requests.

24 26. On June 18, 2008, Staff filed a Letter of Sufficiency in this matter, and indicated that
25 the Staff Report would be filed by September 1, 2008. Staff determined that Christopher Creek is a
26 Class D utility and noted that, pursuant to A.R.S. § 40-250(A), the Commission may decide this case
27

28 ² The issues are outlined in Finding of Fact No. 127.

1 without a hearing.

2 27. On July 18 and July 31, 2008, Staff filed additional Data Requests and on August 12,
3 2008, Christopher Creek responded.

4 28. On August 13, 2008, Staff filed a request to extend the timeclock and grant Staff an
5 additional 40 days to file its Staff Report. Christopher Creek did not object to Staff's request.

6 29. By Procedural Order dated August 30, 2008, Staff was granted until October 13, 2008,
7 to file its Staff Report, and the deadline in this matter was suspended.

8 30. On October 15, 2008, Staff filed its Staff Report recommending approval of Staff's
9 rates and charges.

10 31. On November 25, 2008, a Recommended Opinion and Order was issued in this matter.

11 32. On December 5, 2008, Christopher Creek filed its Exceptions to the Recommended
12 Opinion and Order. Christopher Creek objected to Staff's recommended rates and also to certain
13 terms and conditions set forth in the Recommended Opinion and Order.

14 33. The Recommended Opinion and Order was pulled from the Commission's December
15 2008 Open Meeting.

16 34. On January 28, 2009, a Procedural Order was filed directing Staff to file its Response
17 to Christopher Creek's Exceptions by February 10, 2009, and setting a Procedural Conference for
18 February 20, 2009.

19 35. On January 28, 2009, Staff filed its Response to Christopher Creek's Exceptions.

20 36. At the Procedural Conference held on February 20, 2009, both parties indicated that
21 they did not wish to have a hearing in this matter, each asserting that their respective positions had
22 been fully vetted in their filings.

23 37. On February 26, 2009, Christopher Creek filed its Reply to Staff's Response.

24 38. Because of issues and concerns raised in Christopher Creek's and Staff's respective
25 filings, a comprehensive review of past dockets involving Christopher Creek was undertaken.

26 39. Based on this review, a Procedural Order was issued on July 2, 2009, requesting Staff
27
28

1 to file a Supplemental Staff Report addressing certain issues.³ The Procedural Order noted that the
2 Staff assigned to the Christopher Creek matter should confer with the Staff assigned to the Gardner
3 Application, Docket No. W-20459A-08-0167, for consistency purposes.

4 40. On July 22, 2009, Staff filed a Request for Clarification and Motion to Consolidate.

5 41. On July 23, 2009, Staff filed a Supplement to Request for Clarification.

6 42. On July 28, 2009, a Procedural Order was issued clarifying certain directions in the
7 July 2, 2009, Procedural Order and consolidating the Gardner and Christopher Creek matters.

8 43. On September 4, 2009, Staff filed its Supplemental Staff Report for the consolidated
9 matters.

10 44. On September 30, 2009, Utility Systems filed its Response to the Supplemental Staff
11 Report for the consolidated matters.

12 **RELEVANT COMPANY BACKGROUND**

13 **GARDNER BACKGROUND**

14 45. Gardner is located approximately 30 miles east of Payson, Gila County, Arizona, and
15 serves 94 customers, 82 of which are seasonal customers who visit mostly in the summer months.
16 Gardner received its original Certificate of Convenience and Necessity ("CC&N") in Decision No.
17 31509 (April 27, 1958).

18 46. In Decision No. 60564 (December 18, 1997), regarding an application for a rate
19 increase, the Commission noted that Gardner, which was family-owned and operated, had ongoing
20 compliance issues with the Arizona Department of Environmental Quality ("ADEQ"), that neither of
21 the two wells owned by Gardner had well-head meters and there were also a number of unmetered
22 customers. Decision No. 60564 required Gardner to address these issues, among others, and also file
23 a rate application within two years of the Decision, which would have been December 18, 1999, but
24 that rate application was never filed.

25 47. Instead, on May 31, 2000, Gardner filed an application for approval of the sale of
26 assets and transfer of its CC&N to JNJ Enterprises ("JNJ"), which was owned by Gerald Lenzion,
27

28 ³ The issues are outlined in Finding of Fact No. 178.

1 for a purchase price of \$50,000. In Decision No. 63199 (November 30, 2000), the Commission noted
2 that Gardner had failed to comply with a number of conditions stated in Decision No. 60654. The
3 Commission also noted that the Gardner system experienced a 37 percent water loss during the test
4 year, although Staff believed that installation of a well-head meter on Gardner's Well No. 2 would
5 improve that number. In approving the sale of Gardner to JNJ, the Commission required the new
6 owners of Gardner to comply with all the terms of Decision No. 60564 and to file a rate application
7 within 90 days of the effective date of Decision No. 63199, which would have been February 28,
8 2001.

9 48. Approximately six months later, on May 22, 2001, Gardner filed the required rate
10 application. In the rate application, Gardner noted that it was still experiencing large water losses.
11 Gardner thought this could be remedied by installation of more meters and identification and location
12 of leaks. Gardner asserted that the meters and several main lines needed upgrading, but there was no
13 cash reserve for emergencies or preventative maintenance.⁴

14 The Staff Report in Gardner's 2001 rate application contained the following statement:

15
16 Prior to JNJ's acquisition of Gardner, the Company was operated as a sole proprietorship.
17 Staff's prior audits of Gardner found significant deficiencies in the Company's records.
18 JNJ acquired the physical assets without obtaining Gardner's records. For purposes of
this rate case, Art and Jean Gardner [the prior owners] provided Staff with access to the
records in their possession. Staff found those records to be in poor condition.⁵

19 49. In Staff's review of Gardner's financial statement contained in its 2001 rate
20 application, Staff noted JNJ had financed its \$50,000 acquisition of Gardner with \$10,000 cash and a
21 \$40,000, 15-year promissory note. Gardner included JNJ's long-term debt of \$40,000 in its rate
22 application as Gardner's financial obligation. Staff stated that approval for the financing should have
23 been made at the time of the acquisition, and also noted that JNJ did not submit a formal application
24 for approval of financing with the rate application. However, Staff processed the rate application to
25 incorporate the approval of the \$40,000 promissory note and recommended approval of the financing
26 of JNJ's purchase of the system. Staff's other financial recommendations were that Gardner maintain

27
28 ⁴ Docket No. W-03880A-01-0424, Gardner's May 22, 2001 rate application, page 1.

⁵ Docket No. W-03880A-01-0424, September 18, 2001 Staff Report, page 2.

its books and records in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts ("NARUC USOA") and use the depreciation rates recommended by Staff in Staff's Engineering Report.

50. In Decision No. 64197 (November 8, 2001), the Commission adopted Staff's recommendations regarding the financing approval as well as Staff's other recommendations.

CHRISTOPHER CREEK BACKGROUND

51. Christopher Creek is located approximately 20 miles east of Payson, Arizona, in Gila County and serves 172 customers. Although not stated in the most recent Staff Report, prior Staff Reports for Christopher Creek have indicated that at least half of Christopher Creek's customers are seasonal customers who visit mostly in the summer months.⁶ Christopher Creek received its original CC&N in Decision No. 31855 (October 29, 1965).

52. In Decision No. 63200 (November 30, 2000), the Commission approved the sale of Christopher Creek from Carrol Powell to JNJ. The Decision noted that the purchase price for Christopher Creek was \$130,000.

53. On June 20, 2002, Christopher Creek filed a rate application, asserting that a rate increase was needed because of major repairs performed since JNJ's purchase of Christopher Creek in order to prevent failure of the system, which placed Christopher Creek in financial difficulty.⁷

54. In its Staff Report, Staff stated that:

The Company did not maintain proper accounting records placing excessive demands on Staff resources to reconstruct records consistent with the NARUC USOA. Expenses are not classified and recorded in journals and ledgers. A check register is the only record of expenditures. The Company does not segregate costs between the Christopher Creek and Gardner systems making it extremely difficult to accurately determine the expenses attributable to each system.⁸

55. Ultimately, Staff allocated certain shared equipment and certain shared expenses to be

⁶ See, for example, Docket No. W-03380A-02-0462, Staff Report dated October 2, 2002, Attachment A, Engineering Report, page 2. Information provided by Christopher Creek in the instant rate application in its Water Use Data Sheets appears to bear out this conclusion.

⁷ Docket no. W-03380A-02-0462, Gardner rate application dated June 20, 2002.

⁸ Docket no. W-03380A-02-0462, Staff Report dated October 2, 2002, page 3. As noted in Finding of Fact No. 52, Decision No. 63200 did not specifically require Christopher Creek to maintain its books and records in accordance with the NARUC USOA.

1 split *pro rata* between Christopher Creek and Gardner.⁹

2 56. Regarding Staff's treatment of JNJ's \$130,000 purchase loan for Christopher Creek,
3 Staff concluded:

4 The Company's filing shows an outstanding long-term debt obligation of \$102,953. This
5 is a personal obligation of the Company's managing member [Gerald Lendzion]. The
6 note is not an obligation of JNJ. The Company has not requested, nor has the
7 Commission authorized, debt financing for the Company. The managing member of JNJ
8 incurred the debt to purchase the water system from the prior owner, Mr. Carrol Powell,
9 for \$130,000.¹⁰

10 57. Like Gardner, Christopher Creek was experiencing a high level of water loss during
11 the 2001 test year at 18 percent. Christopher Creek noted that, in 2002, it had found and repaired two
12 major leaks, reducing water loss to 11 percent; an amount still over the maximum of 10 percent
13 recommended by Staff. In its Engineering Report, Staff stated, "the water system is old and there are
14 likely many minor leaks throughout the entire water system. Replacement is probably the only long-
15 term solution."¹¹

16 58. In Decision No. 65353 (November 1, 2002), the Commission adopted Staff's
17 recommended rates and ordered Christopher Creek to maintain its books and records in accordance
18 with the NARUC USOA, and to adopt Engineering Staff's recommended depreciation rates.

19 **SALE OF GARDNER AND CHRISTOPHER CREEK FROM JNJ TO UTILITY SYSTEMS**

20 59. On May 1, 2006, JNJ filed applications for approval of the sale of Gardner and
21 Christopher Creek to Utility Systems. Attached to both applications was a copy of a Commercial
22 Real Estate Purchase Contract ("Purchase Contract"), executed by Gerald and Nadine Lendzion as
23 sellers and Jeffrey and Dianne Daniels and Utility Systems, LLC, as buyers. The Purchase Contract
24 covered the sale of both entities for the aggregate sale amount of \$280,000.

25 60. The Purchase Contract contained the following additional terms: 1) the offer was
26 contingent upon Commission approval of the sale, 2) Carrol Powell (the owner of Christopher Creek
27 prior to Lendzion) was to carry back \$81,000 on the sale of Christopher Creek, 3) Lendzion was to

28 ⁹ The original Staff Report for the current Gardner rate application did not apply the allocations approved in Decision No. 65353.

¹⁰ Docket No. W-03380A-02-0462, Staff Report dated October 2, 2002, page 8.

¹¹ *Id.*, Attachment A, Engineering Report, page 7.

1 carry back \$139,000 on both Christopher Creek and Gardner, 4) the loan was to carry at 7%
 2 amortized over 15 years, with a 7% prepayment penalty if paid off prior to ten years, 5) Lendzion
 3 was to act as a consultant for one year at no additional cost to Daniels, and 6) Lendzion was to
 4 provide a list of items pertaining to the business.

5 GARDNER SALE APPLICATION

6 61. In its Staff Report on the Gardner sale application, Staff initially recommended denial
 7 of the sale because the system was out of compliance with ADEQ requirements regarding monitoring
 8 and reporting, as well as Commission rules and Decisions regarding water loss, and Commission
 9 Decision No. 64197 regarding compliance with the NARUC USOA.

10 62. In its review of JNJ's 2005 Annual Report, Staff found that it was a consolidated
 11 financial statement of Gardner and Christopher Creek, rather than a separate statement for each
 12 system. "The balance sheet included in the Annual Report does not balance. It reflects total assets of
 13 \$259,363, but liabilities and capital of only \$155,942. When a balance sheet does not balance, it puts
 14 the value of the assets into question."¹² The Staff Report went on to say:

15 The annual report shows a total of 250 customers at year end 2005, net plant of \$251,746,
 16 zero customer deposits and zero advances in aid of construction. Long term debt of
 17 \$108,384 was also reported. This debt consists of \$106,384 for the purchase of the water
 18 companies and \$2,000 owed to Gerald Lendzion for operating costs. Principal and
 interest on the two loans from the non-affiliates equals approximately \$17,400 per year.
 According to the annual report's income statement, the combined companies generated
 losses of \$56,388 in 2004 and \$29,824 in 2005.¹³

19 63. The Engineering Report noted that the water loss for Gardner again was exceeding 10
 20 percent—at 12.4 percent during 2005. Further, Gardner never submitted a water loss plan as required
 21 by Decision 64197.

22 64. Additionally, Staff found that Gardner was not maintaining its books in accordance
 23 with NARUC USOA as required by Decision No. 64197. The Staff Report also noted that Gardner's
 24 Annual Report did not include the cancelled checks reflecting payment of 2005's property taxes.

25 65. Staff concluded its Staff Report by noting that it would review its denial
 26 recommendation if Gardner filed documentation indicating compliance with ADEQ requirements by
 27

28 ¹² Docket No. W-03880A-06-0298, Staff Report dated January 8, 2007, page 1.

¹³ *Id.*

1 the date of the hearing, if Gardner filed documentation demonstrating payment of its 2005 property
 2 taxes, and filed documentation indicating that its accounting records were being kept in accordance
 3 with NARUC USOA. Staff also recommended that before the hearing, Gardner file a plan to reduce
 4 its water loss or explain why such cannot be done.

5 66. Finally, Staff stated, “[d]ue to the poor financial health of [Gardner], Staff
 6 recommends the Commission order [Gardner] to file a rate case by March 31, 2008, using a 2007 test
 7 year.”

8 67. At the hearing on February 7, 2007, Gardner provided as exhibits documentation
 9 addressing Staff’s concerns.

10 68. In his testimony, Mr. Lenzion, testifying on behalf of JNJ and Gardner, stated that
 11 during the test year, the Gardner system had experienced a number of leaks, broken water lines and
 12 frozen water lines, but Gardner was able to get the water loss under control.¹⁴

13 69. As to the NARUC USOA requirements, Mr. Lenzion argued that he thought he was
 14 following the guidelines, and asserted he was getting mixed signals from Staff as to what was
 15 required and he was “misled.”¹⁵

16 70. At the hearing, Mr. Daniels testified regarding his understanding of the NARUC
 17 USOA. Mr. Daniels stated he visited the NARUC website and also contacted them by phone and
 18 ordered a manual. He said he was still unclear and was going to attempt to get more information. Mr.
 19 Daniels also stated that he planned to meet with an accountant to discuss it.¹⁶

20 71. When Mr. Daniels was asked if he realized that Gardner had a number of accounting
 21 issues, he said “Yes.” He was also asked, “And do you realize because there are some kind of issues
 22 it may not represent a consistent accounting for the revenues and expenses and net income? So there
 23 may be some discrepancies in the records.” Mr. Daniels answered, “Yes.” He concluded by agreeing
 24 that, even though he was aware of possible accounting problems with Gardner, he was still willing to
 25 purchase it.¹⁷

26
 27 ¹⁴ Docket No. W-03880A-06-0298, Transcript of February 7, 2007, Proceedings, at 10-13.

28 ¹⁵ *Id.*, at 15-16.

¹⁶ *Id.*, at 21-22.

¹⁷ *Id.*, at 22-23.

72. Although the financing terms of the purchase were briefly outlined in the Staff Report, there was no discussion of them at hearing.

73. On March 20, 2007, based on information provided by Gardner at and after the hearing, Staff filed a memorandum withdrawing its denial recommendation, and recommending Commission approval of the transfer.

74. In Decision No. 69582 (May 21, 2007), the Commission approved the transfer. Finding of Fact No. 7 briefly mentions the financing arrangements, but there is no other discussion and no ordering paragraph indicating approval by the Commission of the financing. The Decision also ordered Gardner to file a rate case by March 31, 2008, using a 2007 test year, and to maintain its books and records in accordance with the NARUC USOA.

CHRISTOPHER CREEK SALE APPLICATION

75. In its Staff Report for Christopher Creek's sale application, Staff recommended approval of Christopher Creek's transfer. As in the Staff Report for the Gardner sale application, Staff noted that Christopher Creek's Annual Report was consolidated with that of Gardner and that balance sheet did not balance and cancelled checks indicating payment of property taxes were not filed.¹⁸

76. Staff also stated:

Staff believes that due to inaccurate accounting and apparent large losses, the financial health of Christopher Creek and its continued ability to provide adequate service is at risk. Staff recommends that the Company file a rate case by March 31, 2008, using a 2007 test year. Staff also recommends the Commission order Christopher Creek Haven to keep its books and records in accordance with [NARUC USOA] as required by A.A.C. 14-2-411.D.2.¹⁹

77. Engineering Staff found that during the test year, the system's water loss was calculated to be four percent.

78. At the February 7, 2007, hearing on Christopher Creek's sale application, there was no discussion of the financing terms.

79. Decision No. 69421 (April 16, 2007), approved Christopher Creek's transfer to Utility

¹⁸ Docket No. W-03880A-06-0299, Staff Report dated January 8, 2007, pages 1-2.

¹⁹ *Id.*, page 2.

1 Systems and adopted Staff's recommendations. The only mention of the purchase loan in the
2 Decision was a very brief statement about the Purchase Agreement terms in Finding of Fact No. 6,
3 but there is no other discussion and no ordering paragraph indicating approval by the Commission of
4 the financing.

5 CURRENT RATE APPLICATIONS

6 GARDNER RATE APPLICATION

7 80. On March 21, 2008, Gardner filed its Application in compliance with Decision No.
8 69582. Gardner's proposed rates would increase the typical residential bill with median usage of 576
9 gallons from \$22.83 to \$38.76, for an increase of \$15.93 or 69.8 percent. Its proposed original cost
10 rate base ("OCRB"), which is the same as its fair value rate base ("FVRB"), is \$105,581, which
11 would provide a rate of return of 27.07 percent and an operating margin of 56.56 percent.

12 81. Gardner attached to the Application a three-page narrative describing the challenges it
13 faces in keeping up a 50-year old system that has never been updated and for which no map exists.
14 Gardener's Application noted that when leaks occur, it can be a challenge to find them. The pipes are
15 old and under dirt roads that with each grading by the county come closer and closer to the surface.
16 As the trucks drive over these roads, the now shallow pipes can break and in the winter, they often
17 freeze. The narrative also provides a detailed plan for updating the system, which is costly. Gardner
18 asserts that it is for these reasons that so high an increase is needed.

19 82. On the form for Supplemental Financial Data—Long Term Debt, Gardner lists three
20 long term loans: One dated August 18, 2007, for \$65,000 at 7% interest from Gerald Lendzion for the
21 purchase of Gardner, a second dated June 30, 2006, for \$30,000 at 8% interest from Chase for the
22 purchase of Gardner, and a third for \$18,514.77 at 10.5% interest from Americredit for the purchase
23 of the truck under the name of Jeffrey and Diane Daniels, which Mr. Daniels asserts is used solely by
24 Gardner and Christopher Creek. Under "Authority Granted By ACC Decision No." Gardner lists
25 Decision No. 69582—the Decision granting the sale of the system.

26 83. In its responses to Staff's various data requests, Gardner provided some additional
27 instructive information. It noted that the previous owner will not provide records for the years prior
28 to Utility Systems' purchase in July 2006. Mr. Daniels performs all duties required by Gardner,

1 including excavation, plumbing repair, meter reading, billing, welding, accounting and bookkeeping.
2 He is also a certified operator. Finally, Utility Systems maintains only one ledger for Gardner and
3 Christopher Creek. Certain expenses are divided between the two systems at either 65/35 or 50/50.

4 **Staff Report**

5 84. Staff filed its Staff Report December 22, 2008. Staff recommended an OCRB of
6 \$11,667, a decrease of \$93,914 from Gardner's proposed OCRB of \$105,581, which results in a rate
7 of return of 47.65 percent and an operating margin of 16.52 percent. Staff's \$93,914 recommended
8 reduction to Gardner's proposed rate base reflects adjustments in plant-in-service, accumulated
9 depreciation, and working capital.

10 85. Staff increased Gardner's proposed operating revenue by \$344, from \$31,161, to
11 \$31,505, to reflect an adjustment to metered water revenues. Staff also increased operating expenses
12 by \$6,134, from \$21,955 to \$28,090, based on adjustments to salaries and wages, outside services,
13 water testing, transportation expenses, rate case expenses, miscellaneous expenses, depreciation
14 expenses, and interest expenses.

15 86. Staff's proposed rates would increase the typical residential bill with a median usage
16 of 576 gallons from \$22.83 to \$23.63, an increase of \$0.80, or 3.5 percent. Staff recommended the
17 customary service and installation charges. Staff concluded that its recommended rates and charges,
18 which result in a 16.52 percent operating margin, provide ample funds to manage contingencies,
19 operating expenses, and below the line expenses.

20 87. Staff recommended approval of its rates and charges.

21 88. Staff's other recommendations are described in the following Findings of Fact.

22 89. Gardner should be permitted to collect from its customers a proportionate share of any
23 privilege, sales or use tax as provided for in A.A.C. R-14-2409.D.

24 90. Utility Systems should be ordered to maintain separate revenues, expenses, ledgers
25 and rate bases for both Gardner and Christopher Creek.

26 91. Staff found that Gardner was not in compliance with the earlier Decision requiring it
27 to use the NARUC USOA for recordkeeping because Gardner could not produce an individual
28 general ledger, provide supporting documentation for plant additions and retirements, or provide third

1 party invoices for several expenses. As such, Staff recommended that Gardner be ordered to
2 maintain its books and records in accordance with the provisions of the NARUC USOA, and that
3 Gardner file an affidavit with Docket Control stating that its books and accounting records are in
4 compliance with the NARUC USOA.

5 92. Staff also recommended that Gardner adopt the Depreciation Rate Table ordered in
6 Decision No. 64197, and as set forth in the Engineering Report.

7 93. Staff noted that Gardner's Application asserted that it was requesting a large increase
8 because it needs funds to help pay for major system improvements necessary to maintain system
9 reliability. As such, Staff made an alternative rate recommendation to aid Gardner in its efforts,
10 stating:

11 Although Staff believes its recommended 16.52 operating margin is sufficient to meet
12 the Company's operating needs while also providing an adequate return to the
13 Company's owner, Jeffrey Daniels, Staff recognizes that the circumstances of the
14 Company's situation may present an extraordinary case for the departure from the
15 traditional range of operating margins based on the issues raised in the filing, Staff has
16 prepared alternative schedules and rates depicting a 25 percent operating margin.

17 Staff's alternative rates and charges would provide an operating income of \$9,365...
18 This would provide the Company an additional \$3,806 in operating income over
19 Staff's recommended operating income of \$5,559.

20 Although the Company does not have any approved debt, Staff has included data for
21 the [TIER] and the [DSC]...to illustrate the financial impact of increasing the
22 operating margin to 25 percent in covering the personal loans of Mr. Daniels. At a 25
23 percent operating margin, the Company would have a TIER of 2.23 and a DSC of 1.41
24 on the personal loans of Mr. Daniels.²⁰

25 94. Staff's alternative rates, which are based on increasing Gardner's operating margin to
26 25 percent, would increase the typical residential bill with a median usage of 576 gallons from \$22.83
27 to \$25.31, for an increase of \$2.48 or 10.9 percent.

28 95. Gardner's system consists of two wells with a total production capacity of 60 gallons
per minute ("gpm"), two pressure tanks and a distribution system. According to Staff's Engineering
Report, Gardner's current system can adequately serve its present customer base as well as any
reasonable growth.

²⁰ Staff Report dated December 22, 2008, pages 10-11.

1 96. Engineering Staff found that Gardner is again struggling with a water loss of over 10
2 percent. Staff recommended that Gardner evaluate its water system and prepare a report for
3 corrective measures demonstrating how Gardner will reduce its water loss to less than 10 percent. If
4 Gardner finds that reduction of water loss to less than 10 percent is not cost-effective, Gardner should
5 submit a detailed cost analysis and explanation demonstrating why water loss reduction to less than
6 10 percent is not cost effective. Gardner should file such report with Docket Control, as a
7 compliance item in this docket, within six months of the effective date of the Decision.

8 97. According to Staff, an ADEQ Compliance Status Report indicates that Gardner is
9 currently delivering water that meets water quality standards required by A.A.C. Title 18, Chapter 4.

10 98. Staff notes that Gardner is not within an Active Management Area. Staff states that
11 Gardner's water system is not a community water system and is not required to file an Arizona
12 Department of Water Resources ("ADWR") Annual Water Use Report and System Water Plan.

13 99. According to Staff, Gardner has an approved curtailment tariff and an approved
14 backflow prevention tariff.

15 100. According to Staff, Gardner provided an Affidavit of Mailing Customer Notice
16 indicating that notice of the Application was mailed on March 19, 2008.

17 101. According to Staff, Gardner is in compliance with Commission filing requirements,
18 and is in good standing with the Corporations Division of the Commission.

19 102. Staff's review of the Commission's Consumer Services records showed that from
20 January 1, 2005 through October 30, 2008, there were no complaints or inquiries filed against
21 Gardner.

22 **Gardner Objections and Staff Responses**

23 103. On February 10, 2009, Gardner filed its objections to the Staff Report ("Objections")
24 and on February 13, 2009, Staff filed its Responses to those Objections ("Responses"). After a
25 February 20, 2009, Procedural Conference, discussed below, Gardner replied to Staff Responses
26 ("Reply").

27 104. Gardner's first Objections were to Staff's assertions that it does not keep separate
28 books for both Gardner and Christopher Creek, and does not utilize the required depreciation tables.

1 In its Objections, Mr. Daniels, on behalf of Gardner, stated:

2 I further find it unreasonable to account for these systems separately as the assets of both
3 companies were transferred to Utility Systems, LLC, as one company. Additionally,
4 upon the decisions by the Commissioners to combine the companies, one rate structure
5 should have been established for the conglomeration of the companies into one company.

6 I have adopted the depreciation rate table ordered from the time of my purchase of the
7 companies. The only deviation from this is that I cannot accurately calculate
8 accumulated depreciation for most of the company assets according to your regulation
9 because I have no records showing dates that the equipment was originally put into
10 service. The previous owner did not supply this information although I have requested
11 it.²¹

12 105. In its Responses regarding Gardner's failure to maintain separate records for each
13 system, Staff noted that in response to Staff's April 17, 2008, data request for a copy of Gardner's
14 general ledger for the test year, Gardner stated that it was unable to provide a general ledger for only
15 the Gardner water system.

16 106. Additionally, Staff disputed Gardner's assertion that the Commission had "combined"
17 Gardner and Christopher Creek. Staff noted that no request for consolidation had been received and
18 prior Decisions have not addressed or approved consolidation.

19 107. As far as Gardner's use of the required depreciation tables, Staff stated that the
20 depreciation rate table provided by Gardner in its Application "did not include certain plant accounts
21 specified in Decision No. 64197... Specifically, Gardner omitted Account Nos. 305, 306, 308, 309,
22 310 and 342."²²

23 108. In its Reply, Gardner asserted that the Commission's general rate application form did
24 not include Account Nos. 305, 306, 308, 309, 310 and 342. The Reply asked, "How would we know
25 to include information that is not requested?"²³ Gardner also claims that under NARUC's 1996
26 manual, Accounts 308 and 342 do not exist. As for the other missing account values, Gardner stated
27 it does not have any of the plant items under the other listed Accounts. Nevertheless, Gardner asserts
28 that it followed the depreciation table required under Decision No. 64197 to the best of its ability.

109. Regarding Staff's assertion in the Staff Report that Gardner does not maintain its
books and records in accordance with the NARUC USOA, Gardner responded:

²¹ Objections filed February 26, 2009, page 1.

²² Staff's Responses filed February 13, 2009, page 2.

²³ Gardner's Reply filed February 26, 2009, page 1.

1 All plant values were calculated or estimated by us according to our best knowledge
 2 using NARUC and GAAP standards based on the purchase price of the company and
 3 how the assets back the purchase price or value of the company as is in normal
 4 accounting. We have since found that AAC R-14-2-102, "Treatment of depreciation"
 5 and NARUC definitions state that "Original Cost is defined as the cost of the property at
 6 the time it was first devoted to public service." There is some ambiguity here as to when
 7 assets were originally put into service and their original cost... We don't feel that
 8 previous owners accurately recorded the original dates and values of plant assets or asset
 9 additions and retirements dates and values. We suggest using GAAP to calculate the
 10 value of these assets upon our purchase of the company and that we maintain accurate
 11 records as to all assets, dates and values from this point on.²⁴

12 110. In its Response, Staff noted that currently, as well as in the past, Gardner has been
 13 ordered by the Commission to maintain its books and records in accordance with the NARUC
 14 USOA, but it still does not do so. Staff pointed out that Gardner does not have any records prior to
 15 2007, nor does it have proper documentation for plant additions during the test year. Staff, therefore,
 16 asserted that Gardner is not in compliance with prior Commission Decisions that it maintain its books
 17 and records in accordance with the NARUC USOA.

18 111. In its Reply, Gardner stated:

19 We find this to be very insulting. We have gone out of our way to follow NARUC. They
 20 [NARUC] do not follow GAAP and this has caused an additional burden of having to
 21 keep standard GAAP records for accounting and taxes and separate records for [the
 22 Commission] following NARUC.²⁵

23 112. Gardner asserts that it should be responsible for only those records related to its
 24 assumption of operations in July 2007. "We cannot be held responsible for what the previous owner
 25 did."²⁶

26 113. Gardner then objected to Staff's plant adjustments to organization, land and land
 27 rights, structures and improvements, pumping equipment, computers and software, transportation
 28 equipment tools, shop and garage equipment and power equipment. A number of these objections
 relate to Staff's treatment of the value of various equipment based on original cost rather than current
 value. For example, under land and land rights, Gardner states that the property measures
 approximately 72' x 80'. "Using comparable values, [provided] by a local real estate agent, this
 property is valued at the \$5600 as we submitted. Simply considering the size of the property as

²⁴ Gardner's Objections filed February 10, 2009, page 3.

²⁵ Gardner's Reply filed February 26, 2009, page 1.

²⁶ *Id.*

1 mentioned it is obviously valued at more than the \$331 stated by [Staff].”²⁷ However, using original
2 cost as required by the A.A.C. and the NARUC USOA, the original cost of \$331 for the property is
3 the correct manner of stating the value of the property. Other plant adjustments made by Staff were
4 based on the original cost values listed for certain plant as of December 31, 2000, taken from a prior
5 Gardner rate case,²⁸ less corresponding annual accumulated depreciation through December 31,
6 2007.²⁹

7 114. One plant adjustment made by Staff involved the removal of the debt service for the
8 purchase of the truck. Staff instead allowed for a lease expense of the truck from the Daniels, but
9 Gardner stated it preferred that the Commission approve the long-term debt associated with the
10 purchase of the truck since it is used solely for water company purposes.

11 115. As far as Staff adjustments to operating expenses, Gardner stated that because Mr.
12 Daniels performs all duties related to its operation, the wages and salaries designated by Staff should
13 be more. Gardner also stated that the \$500 added by Staff for a rate case expense had been accounted
14 for elsewhere, and Staff’s disallowances of certain miscellaneous expenses were incorrect.

15 116. In Staff’s Response, Staff stated that it increased the Salaries and Wages expense by
16 \$9,166, from \$3,920 to \$13,086. Staff stated it made this adjustment to reflect Staff’s calculation of a
17 reasonable salary for Mr. Daniels in his capacity as Gardner’s water system operator. “Staff utilized
18 two-thirds of the average water operator salary for Gila County, Arizona, to reflect gradualism in the
19 rate of increase and to reflect Gardner’s small size in comparison to other water companies.”³⁰

20 117. Staff’s adjustments to miscellaneous expenses reflected a removal of expenses not
21 supported by adequate independent documentation, reflecting a \$359 decrease from \$422 to \$63.

22 118. Next, Gardner objected to Staff’s recommended service charges, asserting that they
23 are not reasonable given the amount of time Gardner must spend on certain services such as service
24 establishment, meter tests, and meter re-reads. Additionally, Gardner stated that charges
25 recommended by Staff for deferred payments and late payments are detrimental to Gardner in that
26

27 ²⁷ Gardner’s Objections filed February 10, 2009, page 3.

28 ²⁸ Docket No. W-03880A-01-0424.

29 ²⁹ See Staff’s Response, Schedule DRE-9.

28 ³⁰ Staff’s Response, page 4.

1 they do not provide sufficient impetus for a customer to pay a bill timely. Gardner asserted this is
2 especially detrimental to it since the majority of its customers are only seasonal.

3 119. In its Response, Staff stated, "[t]he service charges recommended by Staff in the Staff
4 Report are consistent with the [A.A.C.] and with prior Commission Decisions. Staff believes they are
5 appropriate."³¹

6 120. Gardner also objected to the removal of expenses related to the loans used to purchase
7 the two systems. In its Objections, Gardner states:

8 It is obvious that the loans involved for the purchase of these companies by Utility
9 Systems, LLC were part of the decisions by the Commissioners. Staff feels they were
10 not directly addressed by the Commissioners so they will not be considered company
11 expenses. Considering that they are included in the docketed decision and that the
12 application for transfer of the companies included the purchase contract it would be
13 hard to believe that the commissioners were unaware of the involvement of the loans
14 involved in the transfer. They are, by common knowledge from the hearing with the
15 Commissioners, part of the transfer and therefore are company expenses.

16 Finally, the Staff and previous owners addressed the long term debt in the last rate
17 application, for the purchase of the company [by Lendzion] and recommended
18 approval of the long term financing. We are requesting the same consideration and
19 approval as it was previously approved by the Commission as per Decision # 64197
20 pg4 paragraphs 17-19. We have accounted for the company following this precedence
21 and feel it is a valid expense.³²

22 121. Staff continues to assert that the purchase loan was never approved in Decision No.
23 69582 and that this purchase loan is a loan of the owner used to acquire Gardner and should not be
24 approved by the Commission.

25 122. Finally, Gardner asserted that Staff has ignored Gardner's poor financial health. In
26 Decision No. 69582, it was ordered that Gardner was to file this rate application specifically because
27 of Gardner's poor financial condition.

28 123. Staff responded that it found that Gardner's financial health is not dire. "[Gardner's]
current operating margin, as filed, is 29.54 percent and its proposed operating margin is 56.56
percent. These operating margins are much higher than this Commission usually allows. Therefore,

³¹ Staff's Response filed February 13, 2009, page 4.

³² Gardner's Objections filed February 10, 2009, page 5.

1 the Company's financial health is not as distressing as the company has stated."³³

2 124. Staff concluded that, after its review of Gardner's objections, Staff continues to
3 support its recommendations as set forth in the original Staff Report.

4 125. At a Procedural Conference on February 20, 2009, both parties stated that they did not
5 believe a hearing on this matter is necessary as each side has presented their arguments and did not
6 have anything to add.

7 126. After the Procedural Conference, because of concerns raised by Gardner's Objections
8 and Staff's Response, a review of Gardner's history and prior decisions³⁴ was undertaken.

9 127. As a result of this review, a Procedural Order was issued requesting that Staff address
10 the following issues in a Supplemental Staff Report. In addressing the following issues, Staff
11 assigned to the Gardner case was requested to confer with the Staff assigned to the Christopher Creek
12 Application for consistency purposes.

13 a) The Staff Report in Docket No. W-03880A-02-0462, Christopher Creek's
14 previous rate proceeding, (Decision No. 65353 (November 1, 2002)), explicitly allocated
15 certain assets of Utility Systems between Christopher Creek and Gardner. A review of
16 both the Staff Reports in the current Christopher Creek and Gardner rate cases indicates
17 that the prior allocation may not have been considered in calculating the value of shared
18 assets for rate base determination in the pending cases. Staff in each matter should confer
19 and make a determination if the previous allocation remains appropriate and shall update
20 the Staff Reports to reflect their current recommendations for asset allocation and its
21 effect on plant values, depreciation, and rate base. Staff should consult whatever records
22 it may have in its possession regarding date in service for Company assets.

23 b) Staff should contact the prior owner, Gerald Lenzion, and request that he provide
24 to Staff copies of all records he has in his possession regarding Gardner, not just those
25 records that he may have already provided to Mr. Daniels.³⁵

26 c) Staff should consider whether Christopher Creek and Gardner should be
27 consolidated for purposes of setting rates. Staff shall make a recommendation regarding
28 this issue, listing the reasons behind such recommendation.

29 d) In Decision No. 63199, (November 30, 2000), a matter involving a prior sale of
30 Gardner, the Commission *sua sponte* approved the inclusion of the purchase price of the
31 water system as long-term debt. In the current matter, Mr. Daniels requests that the

³³ Staff's Response filed February 13, 2009, page 5.

³⁴ As discussed earlier in this Decision, Findings of Fact Nos. 45-50 and 62-75.

³⁵ In a previous matter regarding the sale of the water company from the Gardner family to JNJ Enterprises, Staff had requested records from the Gardner family to assist Staff in their efforts.

Commission again include the purchase price as long-term debt. Staff has recommended that the Commission deny this request. Staff should explain why it recommends the Commission not recognize the acquisition debt in this case.

e) Staff should make a recommendation as to whether the Company should be required to hire a professional accountant or bookkeeper to aid the Company in complying with the NARUC USOA. If Staff makes such recommendation, it should include an allocation of the expense between the two companies.

f) Because Christopher Creek and Gardner are owned by Utility Systems, some of the customer comments received by Staff for Christopher Creek and Gardner may have been attributed to the incorrect Company. Staff should review the customer comments to determine the correct number of comments for each Company.

g) Upon review and analysis of the above-required information, Staff should revise its recommended rates and charges accordingly, if necessary or appropriate.

128. On July 22, 2009, Staff filed a Request for Clarification and Motion to Consolidate. In this request, Staff stated that it asked for the records from Gerald Lendzion pursuant to Item B of the Procedural Order, but Mr. Lendzion objected to the scope of the request. As such, Staff requested a clarification of what specific types of documentation Staff should request of Mr. Lendzion. In its request Staff stated that, in order to consider if the rates of the two companies should be consolidated the dockets needed to be joined, and requested that an order be issued directing consolidation.

129. On July 23, 2009, Staff filed a Supplement to Request for Clarification, providing a list of items that Staff believed should be requested from Mr. Lendzion.

130. On July 28, 2009, a Procedural Order was issued clarifying certain directions in the July 2, 2009, Procedural Order and consolidating the Gardner and Christopher Creek matters.

CHRISTOPHER CREEK RATE APPLICATION

131. On March 21, 2008, Christopher Creek filed its rate application in compliance with Decision No. 69421. Christopher Creek's proposed rates would increase the typical residential bill with median usage of 755 gallons from \$20.77 to \$40.55, for an increase of \$19.78 or 95.23 percent. Its proposed OCRB is \$191,449, which provides a rate of return of 34.92 percent and an operating margin of 62.9 percent.

132. Attached to Christopher Creek's Application is a four-page narrative describing the challenges faced in keeping up a 50-year old system that has never been updated and for which no

1 map exists. Christopher Creek states that, when leaks occur, it can be a challenge to find them. The
2 pipes are old and under dirt roads that with each grading by the county come closer and closer to the
3 surface. And as the trucks drive over these roads, the now shallow pipes can break and in the winter,
4 they often freeze. The narrative notes that of six pressure tanks, the main 5,000 gallon tank is 50
5 years old and failing rapidly. Christopher Creek believes the underground 10,000 storage tank has out
6 lived its live expectancy and is probably leaking. The narrative also provides a detailed plan for
7 updating the system, which is costly. Christopher Creek asserts that it is for these reasons that so high
8 an increase is needed.

9 133. On the form for Supplemental Financial Data—Long Term Debt, Christopher Creek
10 lists four long term loans: One dated August 18, 2007, for \$78,479.74 at 7% interest from Carol
11 Powell for the purchase of Christopher Creek, a second dated January 18, 2007, for \$76,500 at 7 %
12 interest from Gerald Lenzion for purchase of Christopher Creek, a third dated June 30, 2006, for
13 \$30,000 at 8% interest from Chase for the purchase of Christopher Creek, and a fourth for \$18,514.77
14 at 10.5% interest from Americredit for the purchase of the truck. Under “Authority Granted By ACC
15 Decision No.” the Company lists Decision No. 69421—the Decision granting the sale of the system.

16 134. In its responses to Staff’s various data requests, Gardner provided some additional
17 instructive information. It noted that the previous owner will not provide records for the years prior
18 to Utility Systems’ purchase in July 2006. Utility Systems maintains only one ledger for Gardner and
19 Christopher Creek. Certain expenses are divided between the two systems at either 65/35 or 50/50.
20 Finally, Utility Systems asserts that the loans listed in the application under long-term debt were
21 approved by the Commission in the Decision granting the transfer of assets.

22 **Staff Report**

23 135. Staff filed its Staff Report on October 15, 2008. Staff recommended an OCRB of
24 \$115,022, a decrease of \$76,427 from Christopher Creek’s proposed OCRB of \$191,449, which
25 results in a rate of return of 12.06 percent and an operating margin of 23.96 percent. Staff’s \$76,427
26 decrease to Christopher Creek’s proposed rate base reflects adjustments in plant-in-service,
27 accumulated depreciation, and working capital.

28 136. Staff’s adjustments to Christopher Creek’s test year operating income resulted in a

1 decrease of \$3,126, from \$16,999 to \$13,873. Staff increased operating revenue by \$1,473, from
2 \$55,253 to 56,726, reflecting an adjustment to metered water revenues. Staff increased operating
3 expenses by \$4,599, from \$39,425 to \$44,024, based on adjustments to water testing expenses,
4 transportation expenses, rate case expenses, depreciation expenses, and interest expenses.

5 137. Staff's proposed rates would maintain Christopher Creek's current rates, resulting in
6 no increase to the typical residential bill with a median usage of 755 gallons of \$20.77. Staff
7 recommended the customary service and installation charges. Staff concluded that its recommended
8 rates and charges, which result in a 23.96 percent operating margin, provide ample funds to manage
9 contingencies, operating expenses, and below the line expenses.

10 138. Staff recommended approval of its rates and charges, as well as Staff's Service Line
11 and Meter Installation Charges.

12 139. Staff's other recommendations are as described in the following Findings of Fact.

13 140. Christopher Creek should file with Docket Control, as a compliance item in this
14 docket, within 30 days after the effective date of the Decision, a schedule of its approved rates and
15 charges.

16 141. Utility Systems should be ordered to report the customer count information separately
17 for Gardner and Christopher Creek in future Annual Reports.

18 142. Also, Staff found that Christopher Creek had not been maintaining its books and
19 records using the NARUC USOA as directed in Decision No. 69421. According to Staff, its review
20 of the Application revealed that Christopher Creek does not maintain adequate records and could not
21 produce supporting documentation for its plant additions and retirements. As such, Staff
22 recommended that Christopher Creek be ordered to maintain its books and records in accordance
23 with the provisions of the NARUC USOA, and that Christopher Creek file an affidavit with Docket
24 Control stating that its books and accounting records are in compliance with the NARUC USOA.

25 143. Staff also recommended that Christopher Creek adopt the Depreciation Rate Table as
26 required in Decision No. 69421, and as set forth in the Engineering Report.

27 144. Christopher Creek's system consists four wells, with a total production capacity of 81
28 gpm, storage tanks with a total storage capacity of 40,080 gallons, four booster pumps, six pressure

1 tanks, and a distribution system. According to Staff's Engineering Report, Christopher Creek's
2 current system can adequately serve its present customer base as well as any reasonable growth.

3 145. Engineering Staff found that Christopher Creek's water loss during the test year was
4 9.8 percent. Staff recommended that Christopher Creek continue to monitor the water system closely
5 and take action to ensure that water loss remains less than 10 percent in the future. If the water loss
6 at any time before the next rate case is greater than 10 percent, Christopher Creek should come up
7 with a plan to reduce water loss to less than 10 percent, or prepare a report containing a detailed
8 analysis and explanation demonstrating why a water loss reduction to 10 percent or less is not
9 feasible or cost effective.

10 146. Staff states that Christopher Creek is not within an Active Management Area. Staff
11 notes that according to an ADWR Compliance Status Report dated June 11, 2008, Christopher
12 Creek's water system is in compliance with the reporting requirement of A.R.S §§ 45-341 through
13 45-343. Staff relates that, upon ADWR's completion of its review of Christopher Creek's System
14 Water Plan, ADWR will issue a letter stating whether Christopher Creek's System Water Plan meets
15 ADWR's requirements. As such, Staff recommends that Christopher Creek file the documentation
16 issued by ADWR indicating that its System Water Plan meets ADWR requirements.

17 147. According to Staff, an ADEQ Compliance Status Report indicates that Christopher
18 Creek is currently delivering water that meets water quality standards required by A.A.C. Title 18,
19 Chapter 4.

20 148. Staff notes that Christopher Creek has an approved curtailment tariff and an approved
21 backflow prevention tariff.

22 149. According to Staff, Christopher Creek provided an Affidavit of Mailing Customer
23 Notice indicating that notice of the Application was mailed on March 19, 2008.

24 150. According to the Staff Report, Christopher Creek is in compliance with Commission
25 filing requirements, and is in good standing with the Corporations Division of the Commission.

26 151. Staff's review of the Commission's Consumer Services records showed that from
27 January 1, 2005, through August 27, 2008, there were no complaints or inquiries filed against
28 Christopher Creek.

152. On November 25, 2008, a Recommended Opinion and Order was issued in this matter, which adopted Staff's recommendations.

Christopher Creek Exceptions and Staff Responses

153. On December 5, 2008, Christopher Creek filed Exceptions to the Recommended Opinion and Order ("Exceptions"). Christopher Creek objected to Staff's recommended rates and also to certain terms and conditions set forth in the Recommended Opinion and Order.

154. The Recommended Opinion and Order was pulled from the Commission's December 2008, Open Meeting.

155. On January 28, 2009, a Procedural Order was issued directing Staff to file its Response to Christopher Creek's Exceptions by February 10, 2009, and setting a Procedural Conference for February 20, 2009.

156. On January 28, 2009, Staff filed its Response.

157. On February 26, 2009, Christopher Creek filed its Reply to Staff's Response ("Reply").

158. In its Exceptions, Christopher Creek asserted that it had used the depreciation tables displayed on page 20 of the Commission's form of rate application, and that accumulated depreciation could not be calculated because no records exist indicating the dates assets were placed in service or their original cost.

159. In its Response, Staff stated that Christopher Creek's Application did not use the depreciation table approved in Decision No. 65353. Staff specifically noted that Christopher Creek omitted Account Nos. 305, 308, 309, 310 and 342.

160. In its Reply, Christopher Creek asserted that the Commission's general application form did not include Account Nos. 305, 308, 309, 310 and 342. The Reply asked, "How would we know to include information that is not requested?"³⁶ Christopher Creek also noted that under NARUC's 1996 manual, Accounts 308 and 342 do not exist. As to the missing account values, Christopher Creek stated that it does not have any of the plant items under the other listed Accounts.

³⁶ Christopher Creek's Reply filed February 26, 2009, page 1.

1 161. Christopher Creek's next Exception was to Staff's assertion that it did not follow the
 2 NARUC USOA. "We purchased the NARUC manuals, studied them and are following NARUC
 3 USOA better than your organization. For example, the account numbers for plant on your application
 4 are missing applicable NARUC accounts such as account 620."³⁷

5 162. In its Response, Staff stated that Christopher Creek has been ordered by the
 6 Commission to maintain its books and records in accordance with the NARUC USOA, but it still
 7 does not do so. Staff noted that Christopher Creek does not have any records prior to 2007, nor does
 8 it have proper documentation for plant additions during the test year. Therefore, asserted Staff,
 9 Christopher Creek is not in compliance with Commission Decisions requiring Christopher Creek to
 10 maintain its books and records in accordance with the NARUC USOA.

11 163. In its Reply, Christopher Creek stated:

12 We find this to be very insulting. We have gone out of our way to follow NARUC. They
 13 [NARUC] do not follow GAAP and this has caused an additional burden of having to
 14 keep standard GAAP records for accounting and taxes and separate records for [the
 Commission] following NARUC.³⁸

15 164. Christopher Creek asserted that it should be responsible for only those records related
 16 to its assumption of operations in July 2007. "We cannot be held responsible for what the previous
 17 owner did."³⁹

18 165. Like Gardner, Christopher Creek claims that its purchase loan was approved by the
 19 Commission in the Decision No. 69421, approving the sale and transfer of Christopher Creek to
 20 Utility Systems. In its Exceptions, Mr. Daniels, on behalf of Christopher Creek, stated:

21 It is obvious that the loans involved for the purchase of these companies by Utility
 22 Systems, LLC, were part of the decisions by the Commissioners. Staff feels they were
 23 not directly addressed by the Commissioners so they will not be considered company
 24 expenses. Considering that they are included in the docketed decision and that the
 25 application for transfer of the companies included the purchase contract it would be hard
 26 to believe that the commissioners were unaware of the involvement of the loans involved
 in the transfer. They are, by common knowledge from the hearing with the
 Commissioners, part of the transfer and therefore are company expenses. I further find it
 unreasonable to account for these systems separately as the assets of both companies
 were transferred to Utility Systems, LLC, as one company. Additionally, upon the
 decisions by the Commissioners to combine the companies, one rate structure should

27 ³⁷ Christopher Creek's Exceptions filed December 5, 2008, page 1.

28 ³⁸ Christopher Creek's Reply filed February 26, 2009, page 1.

³⁹ *Id.*

have been established for the conglomeration of the companies into one company.⁴⁰

166. Staff continues to maintain that there is no record indicating Commission approval of the loans and they should not be included in the determination of Christopher Creek's revenue requirement.

167. Christopher Creek also asserted that Staff's recommendations ignore Christopher Creek's poor financial health.

168. Staff responded that Christopher Creek's operating margin, as calculated in its Application, is 30.13 percent. Its operating margin as adjusted by Staff is 23.96 percent. This operating margin, according to Staff, is higher than the usually recommended operating margin for a similarly-sized water utility.

169. In its Exceptions, Christopher Creek did not state specifically which operating expense adjustments made by Staff it objected to, but asserted that operating costs have drastically increased since Christopher Creek received its last rate increase and the amount of Staff's recommended operating expenses is insufficient.

170. Staff responded that it included a total of \$4,599 more in operating expenses than requested by Christopher Creek and included types of expenses that Christopher Creek did not request, such as a rate case expense. However, Christopher Creek replied that "the increase of \$4,599 is severely counteracted by the removal of \$13,679 in operating income (loss) and expenses."⁴¹

171. Next, Christopher Creek objected to Staff's recommended service charges, asserting that they are not reasonable given the amount of time Christopher Creek must spend on certain services such as service establishment, meter tests, and meter re-reads. Additionally, Christopher Creek stated that charges recommended by Staff for deferred payments and late payments are detrimental to Christopher Creek in that they do not provide sufficient impetus for a customer to pay a bill timely. Christopher Creek asserted this is especially detrimental to it since the majority of its customers are only seasonal.

172. In its Response, Staff states, "[t]he service charges recommended by Staff in the Staff

⁴⁰ Christopher Creek's Exceptions filed December 5, 2009, page 2.

⁴¹ Christopher Creek's Reply filed February 26, 2009, page 2.

1 Report are consistent with the [A.A.C.] and with prior Commission D cisions."⁴²

2 173. Finally, Christopher Creek generally objected to Staff's adjustments to depreciation,
3 stating that these changes will negatively affect its balance sheet. Staff counters that Christopher
4 Creek did not provide adequate records of its proffered plant additions and retirements. Staff stated:

5 The Company did not record adjusting entries to reflect the plant values adopted in the
6 prior rate case (Decision No. 65353). Further, the Company included personal property
7 as part of utility plant. Staff's objective is to correctly assess the plant of the Company,
so it reflects the appropriate balances...⁴³

8 174. Staff did not recommend any changes to its original Staff Report as a result of
9 Christopher Creek's Exceptions.

10 175. At a Procedural Conference in on February 20, 2009, both parties stated that they did
11 not believe a hearing on this matter is necessary as each side has presented their arguments and did
12 not have anything to add.

13 176. After the Procedural Conference, because of concerns raised by Christopher Creek's
14 Exceptions and Staff's Response, a review of Christopher Creek's history and prior decisions⁴⁴ was
15 undertaken.

16 177. As a result this review, a Procedural Order was issued requesting that Staff address the
17 following issues in a Supplemental Staff Report. In addressing the following issues, Staff assigned to
18 the Christopher Creek case was requested to confer with the Staff assigned to the Gardner
19 Application for consistency purposes.

20 a) The Staff Report in Docket No. W-03880A-02-0462, Christopher Creeks'
21 previous rate proceeding, (Decision No. 65353 (November 1, 2002)), explicitly allocated
22 certain assets of Utility Systems, LLC, between Christopher Creek and Gardner. A
23 review of both the Staff Reports in the current Christopher Creek and Gardner rate cases
24 indicates that the prior allocation may not have been considered in calculating the value
25 of shared assets for rate base determination in the pending cases. Staff in each matter
26 should confer and make a determination if the previous allocation remains appropriate
and shall update the Staff Reports to reflect their current recommendations for asset
allocation and its effect on plant values, depreciation, and rate base. Staff should consult
whatever records it may have in its possession regarding date in service for Company
assets.

27 ⁴² Staff's Response filed January 28, 2009, page 2.

28 ⁴³ *Id.*

⁴⁴ As discussed earlier in this Decision, Findings of Fact Nos. 51-59 and 76-80.

b) Staff should contact the prior owner, Gerald Lendzion, and request that he provide to Staff copies of all records he has in his possession regarding Christopher Creek, not just those records that he may have provided to Mr. Daniels.⁴⁵

c) Staff should consider whether Christopher Creek and Gardner should be consolidated for purposes of setting rates. Staff shall make a recommendation regarding this issue, listing the reasons behind such recommendation.

d) In Decision No. 63199, (November 30, 2000), a matter involving a prior sale of Gardner, the Commission *sua sponte* approved the inclusion of the purchase price of the water system as long-term debt. In the current matter Mr. Daniels requests that the Commission again include the purchase price as long-term debt. Staff has recommended that the Commission deny this request. Staff should explain why it recommends the Commission not recognize the acquisition debt in this case.

e) Staff should make a recommendation as to whether the Company should be required to hire a professional accountant or bookkeeper to aid the Company in complying with the NARUC USOA. If Staff makes such recommendation, it should include an allocation of the expense between the two Companies.

f) Because Christopher Creek and Gardner are owned by Utility Systems, some of the customer comments received by Staff for Christopher Creek and Gardner may have been attributed to the incorrect Company. Staff should review the customer comments to determine the correct number of comments for each Company.

g) Upon review and analysis of the above information, Staff should revise its recommended rates and charges accordingly if necessary or appropriate.

178. On July 22, 2009, Staff filed a Request for Clarification and Motion to Consolidate. In this request, Staff stated that it asked for the records from Gerald Lendzion pursuant to Item B of the Procedural Order, but Mr. Lendzion objected to the scope of the request. As such, Staff requested a clarification of what specific types of documentation Staff should request of Mr. Lendzion. In its request, Staff stated that, in order to consider if the rates of the two companies should be consolidated the dockets needed to be joined, and requested that the two dockets be consolidated.

179. On July 23, 2009, Staff filed a Supplement to Request for Clarification, providing a list of items that Staff believed should be requested from Mr. Lendzion.

180. On July 28, 2009, a Procedural Order was issued clarifying certain directions in the

⁴⁵ In a previous matter regarding the sale of Gardner from the Gardner family to JNJ Enterprises, Staff had requested records from the Gardners to assist in their efforts.

July 2, 2009, Procedural Order and consolidating the Gardner and Christopher Creek matters.

CONSOLIDATED STAFF REPORT

181. On September 4, 2009, Staff filed its Supplemental Staff Report ("Supplemental Staff Report") for the consolidated matters addressing the issues raised in the July 2, 2009, Procedural Order.

182. On September 30, 2009, Utility Systems⁴⁶ filed its response to the Supplemental Staff Report ("Supplemental Response") for the consolidated matters.

ALLOCATION OF ASSETS AND EXPENSES

183. In the Supplemental Staff Report, Staff noted that in Christopher Creek's prior rate case, certain power equipment and certain shared operating expenses were allocated between Gardner and Christopher Creek based on their respective number of customers. But Staff found that the equipment and expenses represent fixed costs that have no direct relationship to the number of customers. As such, Staff proposed that these costs be shared equally between Gardner and Christopher Creek. Staff allocated 50 percent of certain shared expenses to each company, based on Utility System's assertions that 50 percent is a fair and accurate representation of the amounts attributable to each company. Staff pointed out that the dollar impact of either allocation is minimal and, further, there will be no impact on either company if rates are consolidated as Staff is recommending.

ADDITIONAL RECORDS

184. Staff stated that, in spite of several requests of Mr. Lenzion for the Companies' financial records in his possession, he has not provided any records to Staff. Although not specifically stated by Utility Systems, we assume that Mr. Lenzion has not provided any records to it, either, as a result of Staff's requests.

185. Many of Utility Systems' issues with Staff's adjustments to the Companies' plant values and depreciation relate to its assertions that the numbers that Staff began its calculations with are incorrect. Utility Systems asserts that the prior owner's poor record keeping resulted in incorrect

⁴⁶ For ease of reference, from this point, Gardner and Christopher Creek shall be jointly referred to by the owner company, Utility Systems, or also, the "Companies," except where a specific reference to Gardner or Christopher Creek is necessary.

1 original plant cost and date-in-service information. However, Utility Systems does not have records
2 for the Companies prior to their acquisition.⁴⁷

3 186. If Utility Systems can successfully obtain earlier records for the Companies that
4 adequately demonstrate that the values adopted by Staff are incorrect, Utility Systems may certainly
5 present those numbers to the Commission for consideration in its next rate case.

6 187. We note, however, that Staff would not have accepted as fact the prior owner's simple
7 assertions regarding original cost values and plant date-in-service. Then, as now, Staff would have
8 required substantiated records and documentation supporting each value stated by the Companies
9 before adopting that value. We find that Utility Systems has not presented sufficient evidence
10 compelling us to deviate from Staff's recommended values for plant values and depreciation.

11 ACQUISITION DEBT AND FINANCIAL STATUS

12 188. In the Supplemental Staff Report, Staff acknowledged that in Decision No. 64197
13 (Gardner's prior rate case), the Commission specifically approved the inclusion of JNJ's \$40,000
14 promissory note for the purchase of Gardner. However, Staff also noted that in Decision No. 65353,
15 (Christopher Creek's prior rate case) regarding JNJ's purchase loan for Christopher Creek, the
16 Commission adopted Staff's recommendation to remove the interest and principal payments on the
17 non-utility debt incurred by JNJ to acquire Christopher Creek.

18 189. Staff continued by stating:

19 Likewise, when the current owner acquired the two companies from JNJ, Decision No.
20 69421..., there was no request for approval of financing nor a recovery of an acquisition
adjustment. That Decision simply acknowledged in finding of fact 6:

21 According to Staff's Report, the purchase agreement for both Christopher Creek
22 and Gardner shows a purchase price of \$280,000, with \$220,000 being carried by
the current owner.⁴⁸

23 190. Staff concluded by stating, "[c]onsistent with the determination in Decision No. 65353
24 above, Staff has identified the acquisition debt in this case as the indebtedness of the owner and not
25

26 ⁴⁷ Utility Systems cannot be surprised by the issues surrounding the lack of records and poor recordkeeping. As noted in
27 Finding of Fact No. 71, at the hearing for Utility Systems' purchase of Gardner, Mr. Daniels acknowledged he was aware
of existing accounting problems, yet still wished to purchase Gardner. Mr. Daniels should not now be heard to complain
that his own failure to conduct a proper due diligence assessment of assets and records is the fault of anyone but himself.

28 ⁴⁸ Supplemental Staff Report, pages 4-5.

1 of Christopher Creek or Gardner.”⁴⁹ Staff continues to recommend that the principal and interest
2 payments related to the acquisition loans not be included for rate consideration.

3 191. In the Response to the Supplemental Staff Report, Mr. Daniels asserted that:

4 If the acquisition loans are considered personal liability, we would like to run through
5 some very simple math. The acquisition loans are \$588.24 and \$1,691.55 monthly,
6 totaling \$27,357.48 yearly. Staff is recommending a yearly wage for me as operator at
\$21,521.00 leaving a negative difference of \$5,836.48. Therefore, I do not earn enough
from the company to even pay the acquisition loans on a personal basis.⁵⁰

7 192. We acknowledge Mr. Daniels’ concerns, but for the reasons stated below, we agree
8 with Staff’s position regarding the exclusion of the acquisition loans from the calculation of the
9 Companies’ revenue requirement.

10 193. First, Utilities Systems’ position that the Commission actually approved the loans in
11 its Decisions affirming the sale of each company from JNJ to Utilities Systems is incorrect. In those
12 Decisions, the Commission simply noted the purchase price of the sale. There is no financial analysis
13 of the loans and no ordering paragraph stating Commission approval of the sale. Therefore, the
14 Commission does not, and did not in the cases involving the sale of the Companies, approve the loans
15 underlying the sale. Moreover, A.R.S. § 40-285 requires public service corporations to secure
16 approval from the Commission prior to issuing debt. Utility Systems’ failure to seek or obtain such
17 authorization from the Commission prior to incurring debt, by itself, renders the indebtedness invalid
18 as a liability of the Companies.

19 194. Second, requiring the customers to pay for Utility Systems’ purchase of the company
20 is not a burden that is properly borne by Utility Systems’ customers. Unlike situations in which the
21 Commission approves a financing for needed improvements to infrastructure, which ultimately inure
22 to the benefit of the customers, in this instance, Utility Systems is asking the customers to pay for
23 something (acquisition debt), which benefits only the owner of Utility Systems. We understand that
24 in a previous rate case involving Gardner, Staff recommended *sua sponte* that the Commission grant
25 the inclusion of the \$40,000 acquisition loan in rate calculations. But, we also note that in the
26 Christopher Creek rate case, the Commission disallowed the inclusion of JNJ’s acquisition loan. It is

27 _____
28 ⁴⁹ *Id.*

⁵⁰ Response to Supplemental Staff Report, page 1.

1 clearly not the obligation of the Companies' customers to finance loans obtained by a monopoly
2 utility provider, which loans provide no benefit to customers, and for which customers received no
3 prior notice that they were being asked to pay.

4 195. In this case, the loans total \$280,000. Asking customers to pay \$280,000 for Utility
5 Systems' purchase of the Companies is untenable. We understand that not having acquisition loans
6 included in rates may create financial issues for Utility Systems. However, in matters involving the
7 sale of a public utility from one company to another, the Commission assumes that the purchaser has
8 performed the necessary due diligence to determine if the terms of the purchase contract are
9 reasonable prior to entering into it. As such, we expect that before Utility Systems purchased these
10 two small water companies that serve mostly seasonal customers, it performed a comprehensive
11 financial analysis to determine if there would be sufficient income to cover the debt service for the
12 acquisition loans.

13 196. We note that, under Staff's recommendations, Utility Systems will have over \$19,000
14 in net operating income from which it may draw to make up the asserted \$6,000 shortfall in funds to
15 pay Utility System's debt service on its various loans. Should Utility Systems opt to do this,
16 approximately \$13,000 will still be available for system repairs and associated expenses.

17 197. As to obtaining the funds necessary to make the major system repairs which Gardner
18 and Christopher Creek need, as evidenced, for example, by the Companies' ongoing efforts to
19 manage water loss, we encourage Utility Systems to seek funding for these upgrades from the
20 Arizona Water Infrastructure Financing Authority or another source. Once Utility Systems has
21 started that process, it may apply to the Commission for approval of the financing and, if necessary,
22 for a rate increase to cover the debt service on such a loan.

23 198. Finally, Utility Systems correctly notes that in both Decisions involving the sale of the
24 Companies to Utility Systems, the Commission required Gardner and Christopher Creek to file the
25 instant rate applications because of their poor financial conditions. Utility Systems asserts that
26 Staff's recommended rates and charges ignore this. However, we note that in the case of a sale and
27 transfer application, Staff does not typically perform a full financial review, relying instead on the
28 financial information submitted by the company.

199. In this instance, the financial information presented to Staff by the prior owner in the sale applications may well have indicated to Staff that the Companies were having financial difficulties. However, on the current matters, Staff conducted a full financial review and concluded that Gardner and Christopher Creek are not in dire financial straights.

PROFESSIONAL ASSISTANCE

200. In spite of Utility Systems' acknowledged issues with the NARUC USOA, Staff does not recommend requiring Utility Systems to obtain the services of a professional accountant. Staff noted that the "process by which a company achieves NARUC USOA compliance is a business decision that is normally and preferably within the discretion of that company."⁵¹ As such, Staff continues to recommend only that the Commission require Utility Systems to file an affidavit with Docket Control indicating that it is maintaining and will continue to maintain its books and accounting records in compliance with NARUC USOA.

CUSTOMER COMMENTS

201. Staff provided a corrected summary of customer comments. For Christopher Creek, Staff stated that customers submitted eight opinions regarding the requested rate increase: five in favor of the rate increase and three opposed. After Staff filed its Supplemental Staff Report, another customer filed a comment in favor of a rate increase. Additionally, one customer who had initially filed a comment opposed to the rate increase filed another comment stating that they are now in favor of a rate increase. For Gardner, two customers filed opinions opposing the rate increase.

RATE CONSOLIDATION

202. Regarding rate consolidation, Staff stated in the Supplemental Staff Report:

There are several factors that indicate that consolidation for purposes of setting rates may be prudent in this case: 1) all customers for both Christopher Creek and Gardner have 5/8 x 3/4-inch meters, 2) Christopher Creek and Gardner have similar operating costs, 3) administrative and operating efficiencies are facilitated, 4) plant life cycles for the systems are not synchronized providing a smoothing effect on potential future rate increases, and 5) the rate impact to customers would be relatively diminutive despite a minor increase in median bill in Christopher Creek and a decrease in the median bill in Gardner.⁵²

⁵¹ Supplemental Staff Report, page 5.

⁵² Supplemental Staff Report, page 3.

1 203. Staff expressed concern about consolidating the rates because the customers have not
2 received notice regarding the possible consolidation and because dissimilarities in the existing rate
3 structures would cause a greater rate impact for some customers than maintaining independent rates.

4 204. Staff concluded that rate consolidation is appropriate in these matters because Staff's
5 proposed rates are less than those originally requested and noticed by the Companies to the
6 customers, and because the rate impacts are minimal. Staff concluded that rate consolidation is
7 appropriate in this case and recommended that the Commission adopt consolidated rates for Gardner
8 and Christopher Creek.

9 REVISED RATES AND CHARGES

10 205. Given the foregoing, Staff recommended that the Commission adopt Staff's proposed
11 consolidated rates and charges.

12 206. During the test year ended December 31, 2007, Gardner and Christopher Creek served
13 266 residential customers on 5/8 x 3/4-inch meters.

14 207. Median water usage by Gardner residential customers during the test year was 576
15 gallons per month, and median water usage by Christopher Creek was 755 gallons per month.

16 208. The water rates and charges for Gardner and Christopher Creek at present, as proposed
17 by Gardner and Christopher Creek in their March 31, 2008 rate applications, and as recommended by
18 Staff in its Supplemental Staff Report, may be found in the attached Exhibit A.

19 209. According to the Supplemental Staff Report, Staff determined the consolidated OCRB
20 and FVRB to be \$142,456. This is a \$154,575 decrease to the Companies' proposed OCRB of
21 \$297,030, due primarily to Staff's adjustments to plant-in-service, accumulated depreciation, and
22 working capital adjustments. We find Staff's consolidated OCRB of \$142,456 to be reasonable and
23 we therefore adopt \$142,456 as the Companies' consolidated FVRB.

24 210. Staff made several adjustments to the Companies' consolidated proposed test year net
25 operating income, resulting in a decrease of \$9,223, from \$26,205 to \$16,983. The decrease to the
26 Companies' test year net operating income is due to a number of adjustments to metered water
27 revenue, salaries and wages, outside services, water testing, transportation expenses, rate case
28 expense, miscellaneous expense, and depreciation expense.

1 211. Based on Staff's analysis, the Companies' consolidated present water rates and
2 charges produced adjusted operating revenues of \$89,402 and adjusted operating expenses of
3 \$72,420, which resulted in net operating income of \$16,982, for a rate of return of 11.92 percent and
4 a 19 percent operating margin. We find Staff's recommended test year consolidated operating
5 revenues of \$89,402, and test year consolidated operating expenses of \$72,420 to be reasonable.

6 212. The consolidated rates and charges proposed by the Companies would produce
7 operating revenue of \$156,818, and an operating expense of \$61,380, resulting in an operating
8 income of \$95,438, or a 32.13 percent rate of return and 60.86 percent operating margin.

9 213. The consolidated water rates and charges Staff recommends would produce operating
10 revenues of \$91,546 and operating expenses of \$72,420, resulting in operating income of \$19,126, or
11 a 13.43 percent rate of return and a 20.89 percent operating margin. Staff's recommended operating
12 income shall be adopted.

13 214. Gardner's proposed rate schedules would increase the median monthly customer's
14 water bill by \$21.05, or 75.3 percent, from \$27.94 to \$48.99. Christopher Creek's proposed rate
15 schedules would increase the median monthly customer's water bill by \$19.78, or 95.2 percent, from
16 \$20.77 to \$40.55.

17 215. Staff's proposed consolidated rate schedules would decrease Gardner's median
18 monthly customer's water bill by \$6.84, or 24.5 percent, from \$27.94 to \$21.10. Staff's proposed
19 consolidated rate schedules would increase Christopher Creek's median monthly customer's water
20 bill by \$1.05, or 5.1 percent, from \$20.77 to \$21.82.

21 216. As discussed earlier, Staff and Utility Systems continue to disagree on a number of
22 issues regarding the treatment of certain expenses, depreciation and service charges. However,
23 Staff's treatment of these accounts coincides with the standards set forth in NARUC USOA and the
24 amounts required under A.A.C. requirements and depreciation tables, as well as charges for services
25 which Staff deems reasonable based on Staff's experience with similar-sized public water companies.

26 217. Utility Systems states that should the Commission adopt Staff's rates and charges,
27 Utility Systems will most likely face bankruptcy, and the Companies will be foreclosed upon and
28

1 repossessed by the previous owner.⁵³ As noted earlier, the Commission expects that a purchaser has
 2 conducted the necessary due diligence before agreeing to the terms of a purchase contract. A
 3 purchaser's failure to do so should not result in the companies' customers having to finance
 4 acquisition loans through higher rates.

5 STAFF RECOMMENDATIONS

6 218. The recommendations made by Staff in its original Staff Report for Gardner are as
 7 follows:

- 8 a) That the Commission adopt Staff's recommended rates and charges;
- 9 b) In addition to collection of its regular rates and charges, Gardner may collect from
 10 its customers a proportionate share of any privilege, sales, or use tax as provided
 for in A.A.C. R14-2-409(D);
- 11 c) That Gardner be ordered to file with Docket Control, as a compliance item in this
 12 docket, a tariff schedule of its new rates and charges within 30 days after the
 effective date of the Decision in this proceeding;
- 13 d) That Utility Systems be ordered to maintain separate revenues, expenses, ledgers,
 14 and rate bases for both Gardner and Christopher Creek;
- 15 e) That Utility Systems be required to maintain books and records for Gardner in
 accordance with the NARUC USOA;
- 16 f) That Gardner be required to file an affidavit with Docket Control stating that its
 17 books and accounting records are in compliance with the NARUC USOA;
- 18 g) That Gardner evaluate its water system and prepare a report for corrective
 19 measures demonstrating how Gardner will reduce its water loss to less than 10
 20 percent. If Gardner finds that reduction of water loss to less than 10 percent is not
 21 cost-effective, Gardner shall submit a detailed cost analysis and explanation
 demonstrating why water loss reduction to less than 10 percent is not cost
 effective. The Company shall file such report with Docket Control, as a
 compliance item in this docket, within six months of the effective date of the
 decision in this case; and
- 22 h) That Gardner adopt the Depreciation Rate Table ordered in Decision No. 64197,
 23 as delineated in Table C in Section H of the Engineering Report attached to the
 Staff Report.

24 219. The recommendations made by Staff in its original Staff Report for Christopher Creek
 25 are as follows:

- 26 a) That the Commission adopt Staff's recommended rates and charges;

28 ⁵³ Supplemental Response, page 1.

- b) That the Commission adopt Staff's Service Line and Meter Installation Charges as shown in Table D of the Engineering Report attached to the Staff Report;
- c) That Christopher Creek adopt the Depreciation Rate Table as delineated in Table C of the Engineering Report attached to the Staff Report;
- e) That Christopher Creek continue to monitor the water system closely and take action to ensure that water loss remains less than 10 percent in the future. If the water loss at any time before the next rate case is greater than 10 percent, Christopher Creek shall come up with a plan to reduce water loss to less than 10 percent, or prepare a report containing a detailed analysis and explanation demonstrating why a water loss reduction to 10 percent or less is not feasible or cost effective. Such a report shall be docketed under this docket;
- f) That the Company file with Docket Control, as a compliance item in this docket, the documentation issued by ADWR indicating that Christopher Creek's System Water Plan met ADWR requirements;
- g) That Utility Systems, LLC, be required to report the customer count information separately for each of its two independent water systems in future Annual Reports;
- h) That Christopher Creek be ordered to maintain its records in accordance with NARUC USOA;
- i) That Christopher Creek be ordered to file an affidavit with Docket Control stating that its books and accounting records are in compliance with NARUC USOA; and
- j) That Christopher Creek file with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision, a schedule of its approved rates and charges.

220. The recommendations made by Staff in its Supplemental Staff Report for Christopher Creek are as follows:

- a) That consolidation of Gardner's and Christopher Creek's rates is appropriate in this case;
- b) That the Commission adopt Staff's recommended consolidated rates and charges attached hereto as Exhibit A; and
- c) That the Commission order Utility Systems to file with Docket Control, as a compliance item in this docket, stating that it is maintaining and will continue maintaining its books and accounting records in compliance with NARUC USOA.

221. Based on the facts and issues presented and discussed herein, we find that the following Staff recommendations are reasonable and should be adopted.

222. We find that consolidation of Gardner's and Christopher Creek's rates is appropriate in this case.

223. We find that Staff's recommended consolidated rates and charges as delineated in the attached Exhibit A are reasonable and should be adopted.

1 224. Utility Systems shall file with Docket Control, as a compliance item in this docket,
2 within 30 days of the effective date of this Decision, a schedule of its approved rates and charges.

3 225. In addition to collection of its regular rates and charges, Utility Systems may collect
4 from its customers a proportionate share of any privilege, sales, or use tax as provided for in A.A.C.
5 R14020409(D).

6 226. Utility Systems shall adopt the Depreciation Rates as delineated in the attached
7 Exhibit B.

8 227. Utility Systems shall maintain its books and accounting records in accordance with the
9 NARUC USOA and shall file with Docket Control, as a compliance item in this docket, within 90
10 days of the effective date of this Decision, an affidavit stating that its books and accounting records
11 are in compliance with the NARUC USOA.

12 228. Utility Systems shall file with Docket Control, as a compliance item in this docket, no
13 later than April 30, 2010, the documentation issued by ADWR indicating that the Christopher Creek
14 System Water Plan meets ADWR requirements.

15 229. Engineering Staff in both original Staff Reports made recommendations regarding
16 rates of water loss. The Gardner system exceeded the 10 percent acceptable water loss rate and
17 Christopher Creek was within acceptable limits, but approaching 10 percent. However, the
18 Supplemental Staff Report did not address the rate of water loss issue after consolidation of the
19 Companies. As such, at this point in time, we will only require that Utility Systems monitor the
20 water loss for both systems closely. If Utility System finds that the combined water loss for both
21 systems is greater than 10 percent, it shall devise a plan to reduce water loss to less than 10 percent,
22 or, alternatively, prepare a report containing a detailed analysis and explanation demonstrating why a
23 water loss reduction to 10 percent or less is not feasible or cost effective. This report shall be
24 docketed under this docket.

25 230. According to the respective original Staff Reports, Gardner and Christopher Creek are
26 current on the payment of its sales and property taxes. We note that Decision No. 69421 and Decision
27 No. 69582, Christopher Creek and Gardner were ordered to file annually, as part of their Annual
28 Reports, affidavits with the Utilities Division attesting that each is current on paying its property

taxes. We believe it reasonable to require the Company to continue to do so.

CONCLUSIONS OF LAW

1. Utility Systems, Gardner and Christopher Creek are a public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-250, 40-251, 40-301, 40-302, and 40-303.

2. The Commission has jurisdiction over Utility Systems, Gardner and Christopher Creek and of the subject matter of the Applications.

3. Notices of the Rate Applications were given in accordance with the law.

4. The rates and charges authorized herein are just and reasonable and should be approved without a hearing.

5. Staff's recommendations, as modified, as set forth in Findings of Fact Nos. 223 through 230, as well as Finding of Fact No. 231 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Utility Systems, LLC, d/b/a Gardner Water Company and Utility Systems, LLC, d/b/a Christopher Creek Haven Water Company are hereby consolidated.

IT IS FURTHER ORDERED that the following rates and charges for Utility Systems, LLC, are hereby approved:

MONTHLY USAGE CHARGE

Gallons in the minimum	0
5/8" x 3/4" Meter	\$ 18.80
3/4" Meter	33.56
1" Meter	63.39
1-1/2" Meter	105.26
2" Meter	167.96
3" Meter	301.59
4" Meter	499.98
6" Meter	999.75

COMMODITY CHARGES

Per 1,000 gallons	
All Meter	
0-2,000 Gallons	\$4.00
2,001 – 8,000 Gallons	5.00
Over 8,001 Gallons	7.00

	<u>Service Line</u>	<u>Meter Installation</u>	<u>Total¹</u>
1	5/8" x 3/4" Meter	\$445.00	\$ 465.00 ²
2	3/4" Meter	445.00	565.00 ²
	1" Meter	495.00	315.00
3	1-1/2" Meter	550.00	525.00
	2" Meter	830.00	1,045.00
4	3" Meter	830.00	1,890.00
	4" Meter	1,045.00	1,670.00
5	6" Meter	1,165.00	2,545.00

SERVICE CHARGES

8	Establishment	\$ 30.00
	Establishment (After Hours)	40.00
9	Reconnection (Delinquent)	50.00
	Reconnection (Delinquent)-After Hours	40.00
10	Meter Test (If Correct)	20.00
	Deposit Requirement (Residential)	(a)
11	Deposit Interest	(a)
	Reestablishment (Within 12 Months)	(b)
12	NSF Check	\$25.00
	Deferred Payment (Per Month)	1.50%
13	Meter Re-read (If Correct)	\$10.00
14	Late Charge-Per Month	1.50%

**MONTHLY SERVICE CHARGE FOR FIRE
SPRINKLER**

16	4" or Smaller	(c)
	6"	(c)
17	8"	(c)
	10"	(c)
18	Larger than 10"	(c)

- 19 ¹ Plus road cuts at cost, when road crossing is necessary.
- 20 ² Charge includes Sensus Touch Read Meter
- 21 Per Commission Rule A.A.C. R-14-2-403(B).
- 22 (a) Residential – two times the average bill. Non-residential – two and one-half times the
- 23 average bill.
- 24 (b) Minimum charges times number of months disconnected.
- 25 (c) 1.00% of Monthly Minimum for a Comparable Sized Meter Connection, but no less
- 26 than \$5.00 per month. The Service Charge for Fire Sprinklers is only applicable for
- 27 service lines separate and distinct from the primary water service line.

28 IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service

provided on and after January 1, 2010.

IT IS FURTHER ORDERED that Utility Systems, LLC, shall notify its customers of the rates

and charges authorized herein, and their effective date, in a form acceptable to the Commission's

Utilities Division Staff, by means of an insert in Utility Systems, LLC's, next regularly scheduled

1 billing.

2 IT IS FURTHER ORDERED that Utility Systems, LLC, is hereby directed to file with
3 Docket Control, as a compliance item in this docket, within 30 days of the effective date of this
4 Order, a schedule of its approved rates and charges.

5 IT IS FURTHER ORDERED that in addition to collection of its regular rates and charges,
6 Utility Systems, LLC, shall collect from its customers a proportionate share of any privilege, sales or
7 use tax pursuant to A.C.C. R14-2-409(D).

8 IT IS FURTHER ORDERED that Utility Systems, LLC, shall adopt the Depreciation Rates as
9 delineated in the attached Exhibit B.

10 IT IS FURTHER ORDERED that Utility Systems, LLC, shall maintain its books and
11 accounting records in accordance with the NARUC USOA.

12 IT IS FURTHER ORDERED that Utility Systems, LLC, shall file with Docket Control, as a
13 compliance item in this docket, within 90 days of the effective date of this Decision, an affidavit
14 stating that its books and accounting records are in compliance with the NARUC USOA.

15 IT IS FURTHER ORDERED that Utility Systems, LLC, shall file with Docket Control, as a
16 compliance item in this docket, no later than April 30, 2010, the documentation issued by ADWR
17 indicating that the Christopher Creek System Water Plan meets ADWR requirements.

18 IT IS FURTHER ORDERED that Utility Systems, LLC, monitor the water loss for both of its
19 systems. If Utility Systems, LLC, finds that the combined water loss for both systems is greater than
20 10 percent, it shall devise a plan to reduce water loss to less than 10 percent, or, alternatively, prepare
21 a report containing a detailed analysis and explanation demonstrating why a water loss reduction to
22 10 percent or less is not feasible or cost effective. This report shall be docketed under this docket.

23 ...

24 ...

25 ...

26 ...

27 ...

28

1 IT IS FURTHER ORDERED that Utility Systems, LLC, shall continue to file as part of its
2 Annual Report an affidavit attesting that it is current on payment of its property taxes in Arizona.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN

COMMISSIONER

9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
11 Executive Director of the Arizona Corporation Commission,
12 have hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this _____ day of _____, 2009.

15 _____
16 ERNEST G. JOHNSON
17 EXECUTIVE DIRECTOR

18 DISSENT _____
19

20 DISSENT _____
21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: UTILITY SYSTEMS, LLC, DBA GARDNER WATER COMPANY
2 AND UTILITY SYSTEMS, LLC, DBA CHRISTOPHER CREEK
HAVEN WATER COMPANY

3 DOCKET NOS.: W-20459A-08-0167 and W-20459A-08-0168

4
5 Jeffrey Daniels,
6 UTILITY SYSTEMS, LLC
7 173 South Blackfoot Road
Colcord Estates
HC 2 Box 164-H
Payson, AZ 85541

8 Janice Alward, Chief Counsel
9 Legal Division
ARIZONA CORPORATION COMMISSION
10 1200 W. Washington Street
Phoenix, AZ 85007

11 Steve Olea, Director
12 Utilities Division
ARIZONA CORPORATION COMMISSION
13 1200 W. Washington Street
Phoenix, AZ 85007

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

RATE DESIGN

Monthly Usage Charge	Christopher Creek's Present Rates	Gardner Present Rates	Company Proposed Rates	Staff Recommended Rates Under Consolidation
5/8 x 3/4" Meter - All Classes	\$ 17.75	\$ 10.95	\$ 33.00	\$ 18.80
3/4" Meter - All Classes	33.56	29.95	43.00	33.55
1" Meter - All Classes	53.39	49.99	83.00	63.39
1 1/2" Meter - All Classes	105.25	99.98	113.00	105.25
2" Meter - All Classes	167.96	159.96	173.00	167.96
3" Meter - All Classes	301.59	299.93	N/A	301.59
4" Meter - All Classes	485.50	499.98	N/A	498.98
6" Meter - All Classes	727.73	999.75	N/A	898.75
Gallons in Minimum	-	-	-	-

Commodity Rates

All Meters:				
From 0 to 4,000 Gallons	\$ 4.00	N/A	N/A	N/A
From 4,001 to 12,000 Gallons	\$ 4.75	N/A	N/A	N/A
Over 12,000 Gallons	\$ 6.50	N/A	N/A	N/A
From 0 to 10,000 Gallons	N/A	5.00	N/A	N/A
Over 10,000 Gallons	N/A	7.00	N/A	N/A
From 0 to 5,000 Gallons	N/A	N/A	10.00	N/A
From 5,001 to 10,000 Gallons	N/A	N/A	12.00	N/A
Over 10,000 Gallons	N/A	N/A	15.00	N/A
From 0 to 2,000 Gallons	N/A	N/A	N/A	4.00
From 2,001 to 8,000 Gallons	N/A	N/A	N/A	5.00
Over 8,001 Gallons	N/A	N/A	N/A	7.00
Bulk Haulers				
Per 1,000 Gallons	N/A	N/A	N/A	7.00

Service Line and Meter Installation CI	Line	Meter	Total		Line	Meter	Total	Staff Recommendation*
5/8" x 3/4" Meter	\$ 385	\$ 135	\$ 520	\$ 480	\$ 445	\$ 155	\$ 600	\$ 445 \$ 465 ² \$ 910 ²
3/4" Meter	385	215	600	550	445	255	700	445 565 ² 1010 ²
1" Meter	435	255	690	630	495	315	810	495 315 810
1 1/2" Meter	470	465	935	800	550	525	1,075	550 525 1,075
2" Meter	530	965	1,595	1,450	630	1,045	1,875	630 1,045 1,875
3" Meter	530	1,890	2,320	1,975	630	1,890	2,720	630 1,890 2,720
4" Meter	805	1,470	2,275	3,040	1,045	1,670	2,715	1,045 1,670 2,715
6" Meter	845	2,285	3,130	5,795	1,165	2,545	3,710	1,165 2,545 3,710

Note 1: Plus road cuts at cost, when road crossing is required.

Note 2: Charge includes Senseus Touch Read Meter.

Service Charges		Chris. Crk		Gardner	
Establishment	\$ 30.00	\$ 25.00	\$ 75.00	\$30.00	\$ 30.00
Establishment (After Hours)	40.00	40.00	-	40.00	40.00
Reconnection (Delinquent)	30.00	50.00	50.00	60.00	60.00
Reconnection (Delinquent and After Hours)	40.00	N/A	50.00	60.00	40.00
Meter Test	20.00	35.00	25.00	100.00	20.00
Deposit Requirement (Residential)	(a)	(a)	(a)	(a)	(a)
Deposit Interest	(a)	(a)	1.60%	1.50%	(a)
Re-Establishment (Within 12 Months)	(b)	(b)	(b)	(b)	(b)
NSF Check	\$ 15.00	\$ 25.00	35.00	35.00	\$ 25.00
Deferred Payment, Per Month	1.00%	1.50%	5.00%	5.00%	1.50%
Meter Re-Read (if correct)	10.00	5.00	10.00	10.00	10.00
Late Fee	3.00	5.00	10.00	10.00	1.50%

NT = No Tariff

Monthly Service Charge for Fire Sprinkler

4" or Smaller	N/A	(c)	N/A	N/A	(c)
6"	N/A	(c)	N/A	N/A	(c)
8"	N/A	(c)	N/A	N/A	(c)
10"	N/A	(c)	N/A	N/A	(c)
Larger than 10"	N/A	(c)	N/A	N/A	(c)

Per Commission Rules (R14-2-403.8)

- (a) Residential - two times the average bill. Non-residential - two and one-half times the average bill.
 (b) Minimum charge times number of months disconnected.
 (c) 1.00 % of Monthly Minimum for a Comparable Sized Meter Connection, but no less than \$5.00 per month. The Service Charge for Fire Sprinklers is only applicable for service lines separate and distinct from the primary water service line.

EXHIBIT B

TABLE C
DEPRECIATION RATE TABLE FOR WATER COMPANIES

NARUC Account No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
304	Structures & Improvements	30	3.33
305	Collecting & Impounding Reservoirs	40	2.50
306	Lake, River, Canal Intakes	40	2.50
307	Wells & Springs	30	3.33
308	Infiltration Galleries	15	6.67
309	Raw Water Supply Mains	50	2.00
310	Power Generation Equipment	20	5.00
311	Pumping Equipment	8	12.5
320	Water Treatment Equipment		
320.1	Water Treatment Plants	30	3.33
320.2	Solution Chemical Feeders	5	20.0
330	Distribution Reservoirs & Standpipes		
330.1	Storage Tanks	45	2.22
330.2	Pressure Tanks	20	5.00
331	Transmission & Distribution Mains	50	2.00
333	Services	30	3.33
334	Meters	12	8.33
335	Hydrants	50	2.00
336	Backflow Prevention Devices	15	6.67
339	Other Plant & Misc Equipment	15	6.67
340	Office Furniture & Equipment	15	6.67
340.1	Computers & Software	5	20.00
341	Transportation Equipment	5	20.00
342	Stores Equipment	25	4.00
343	Tools, Shop & Garage Equipment	20	5.00
344	Laboratory Equipment	10	10.00
345	Power Operated Equipment	20	5.00
346	Communication Equipment	10	10.00
347	Miscellaneous Equipment	10	10.00
348	Other Tangible Plant		

NOTES:

- These depreciation rates represent average expected rates. Water companies may experience different rates due to variations in construction, environment, or the physical and chemical characteristics of the water.
- Acct. 348, Other Tangible Plant may vary from 5% to 50%. The depreciation rate would be set in accordance with the specific capital items in this account.

DECISION NO. _____